

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0044P
Sales and Use Tax
For the Years 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of selling and servicing new and used vehicles. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested the assessment of penalty and a hearing was scheduled. The taxpayer submitted additional documentation for review in lieu of attending a hearing. This finding is based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

The taxpayer contends that its failure to pay the proper use tax was not due to negligence. The taxpayer supported this contention by submitting a previous audit to indicate that many of the deficiencies found in this audit were not considered deficiencies in the previous audit. However, this audit also included use tax assessments on clearly taxable items such as light bulbs, soft drinks, business cards, greeting cards, badges, magnets, and hand cleaner. Use tax was also assessed on the use of some of these items in the previous audit. The taxpayer's breach of its duty to pay sales tax at the time of purchase or self assess use tax on these items constitutes negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS--041902